

APPENDIX 1

DECISION PAPER 3

COMMITTEE
DATE

RIGHTS OF WAY SPECIAL SUB
10 JULY 2000

REPORT OF
Contact
Officer

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PUBLIC RIGHTS OF WAY ENFORCEMENT POLICY (RWSS 36/00)

INTRODUCTION

1 The current enforcement policy, detailed below, was agreed by the Rights of Way Special Sub-Committee as part of a work programme report received on 3 April 1995. This report explains how the policy is working and seeks confirmation of that policy.

BACKGROUND

2 The public rights of way network throughout Cheshire are not only highways in law but also a very major recreational resource by which local people and visitors enjoy Cheshire's countryside. The County Council has a common law right to remove anything from a public right of way that it believes constitutes an obstruction, danger or encroachment without consulting any other party. Furthermore, the County Council has a statutory duty to remove all obstructions and encroachments to public rights of way. Various powers are available to the Council under the Highways act 1980 to enable it to perform its statutory duty, including prosecution and service of legal notice empowering the Council to carry out remedial work and recover costs from the offender. Although the Council has these duties, in the first instance the approach is always to advise and assist landowners to fulfill their legal obligations. Additionally, the Council uses discretionary powers to assist landowners with their obligations to rights of way wherever possible. However, this approach has to be underpinned by an enforcement policy and this policy is intended to utilize the powers available to the council in a fair and even handed way in order to ensure the Council complies with its statutory duty and achieves best value.

INTERFERENCE BY PLOUGHING AND GROWING CROPS

3 This is a serious problem throughout the county wherever arable crops are grown and, despite the efforts of the public rights of way maintenance staff, a considerable proportion of the network can be unavailable at certain seasons of the year due to illegal obstruction by ploughing and crops.

4 The remedies available to the Council extend to prosecution upon discovery of an offence and service of legal notice allowing a minimum of 24 hours for the offender to put matters right before the Council is empowered to carry out the work and recover costs.

5 Wherever such an offence is discovered the County Council will, if it is the first offence, explain the law to the offender and allow seven days for them to put matters right. Upon expiry of that period, if the path has not been reinstated to a satisfactory standard, the Council will serve legal notice upon the person responsible requiring them to reinstate the path within seven days. If the path is still not reinstated to a

6 On occasions where an occupier has responded to the first request but repeats the offence in subsequent years, the Council will serve legal notice requiring the reinstatement of the path within seven days, as set out above.

7 On occasions where an occupier re-offends after service of legal notice, the Council will again serve legal notice and, additionally, consider prosecution.

8 All recipients of enforcement notices in any one year will be sent letters setting out the law and reminding them of their obligations before the next cropping season commences.

GENERAL OBSTRUCTION TO AND ENCROACHMENT ON PUBLIC RIGHTS OF WAY

9 The service encounters a multitude of obstructions encompassing everything from deposited piles of material to structures and buildings of varying nature.

10 In all cases the first approach is one of consultation and dialogue, explaining the legal issues involved and the Council's duty in these matters. The offender is requested to remove the obstruction within seven days or within a reasonable time limit determined by the Council for obstructions of a substantial nature. If this approach fails, formal legal notice is served requiring the offender to remove the obstruction within a specified time. Upon expiry of that time the Council will remove the obstruction and recover costs from the offender.

11 If the obstruction recurs the Council will consider prosecution.

12 Whenever the Council is obliged to resort to service of notice in these matters the local Member will be informed.

CONCLUSION

13 The service will monitor the effectiveness of this policy and bring a further report to the Sub-Committee if it feels that it is failing to fulfill the Council's statutory duty in respect of public rights of way or failing to achieve best value. The service will also produce a short leaflet setting out the various problems that occur on public rights of way and the Council's policy towards them. The leaflet will be available to the public in general and it will be provided to all offenders in order that they are aware of the response they can expect from the Council.

RECOMMENDED:

That the policy outlined above be endorsed.

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